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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: David A. Cheresch et al.)
Application No. 09/538,248)
Filed: March 29, 2000) Group Art Unit: 1652
For: METHODS USEFUL FOR TREATING)
VASCULAR LEAKAGE AND EDEMA)
USING SRC OR YES TYROSINE)
KINASE INHIBITORS)
Examiner: Rebecca E. Prouty) Attorney Docket No. TSRI 651.3

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the final rejection of claims 1-4, 17-20, 32, and 33 in the above-identified application. This Reply Brief is submitted in accordance with 37 C.F.R. §41.41.

1. Real Party in Interest.

This application is assigned to The Scripps Research Institute, licensed to Merck KGaA, Darmstadt, Germany, and sublicensed to Targen, Inc.

2. Related Appeals and Interferences.

Related Appeals and Interferences are described in Applicant's Brief on Appeal.

3. Status of All Claims.

Claims 1-4, 17-20, 32, and 33 are under appeal. The claims are presented in Appendix A of the Brief on Appeal. Claims 1 and 17 are independent claims. Claims 5-16 and 21-31 have been cancelled.

4. Status of All Amendments Filed Subsequent to Final Rejection.

No claim amendments were filed subsequent to final rejection.

5. Concise Summary of the Invention.

The present invention is summarized in Applicants' Brief on Appeal.

6. Grounds of Rejection to be Reviewed on Appeal.

A. Claims 1, 2, 17 and 18 stand rejected under 35 U.S.C. 102(e) as being anticipated by US 6,001,839 ("the Calderwood Patent").

B. Claims 1, 2, 17 and 18 stand rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application No. 2003/0187001 ("the Calderwood Application").

C. Claims 1, 2, 17 and 18 stand rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application No. 2002/0156081 ("Hirst *et al.*").

D. Claims 3, 4, 19, 20, 32, and 33 stand rejected under 35 U.S.C. 103(a) as being obvious over the Calderwood Patent, the Calderwood Application, and Hirst *et al.*, in view of Hanke *et al.*

7. Response to Examiner's Argument.

For the most part, the Examiner's Answer reiterates arguments made during prosecution. In response to Applicants' arguments in the Brief on Appeal, however, the Examiner now relies upon allegations which are without evidentiary support. No weight should be given to these allegations.

For example, on page 13, the Examiner states that human c-src is "considered to be the model src kinase in the art and is the one which has been most studied." This allegation is repeated on page 16 and on page 19. The Examiner did not cite any authority of record, or otherwise, in support of this assertion.

Also on page 13, the Examiner states that "one of skill in the art would clearly consider inhibition data for one src-kinase to be representative of a compounds [sic] ability to inhibit any src kinase as all src kinases are known to be highly homologous." This assertion is repeated on pages 17 and 20. The Examiner does not cite a single reference to support this allegation either.

Similarly, on page 14, the Examiner asserts:

"Selectivity of an inhibitor within a particular type of kinase (for example between human and murine c-Src) is rare indeed, if in fact any examples of such are even known (the examiner can find no mention of any such selectivity among any of the art of record, while art showing both overlapping and selective specificity between different types, even related types such as Src and Lck, which are both Src-family kinases, are abundant in the art)."

This assertion is also repeated on page 17 and page 20. Again, the Examiner provides no evidence to support this statement. With respect to the alleged lack of examples of specificity within a particular class of kinase, it should be noted that there is no evidence that any of the art of record addressed this question. If no such selectivity was ever investigated in the studies of record, the lack of evidence for such selectivity is of no relevance whatsoever.

The Examiner has not provided adequate support for her attempted rebuttal of Applicants' arguments. Unsupported arguments and statements in the Examiner's Answer should be given no weight.

Conclusion.

The foregoing discussion and the arguments set forth in Applicants' Brief on Appeal are believed to amply distinguish all of the present claims over the applied references and to effectively rebut the Examiner's Answer. Reversal of the rejections and allowance of all claims is solicited.

Respectfully submitted,

Dated 2 June 2006

By Talivaldis Cepuritis
Talivaldis Cepuritis (Reg. No. 20,818)

OLSON & HIERL, LTD.
20 North Wacker Drive
36th Floor
Chicago, Illinois 60606
(312) 580-1180



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CLAIMS APPENDIX

The claims on Appeal are listed in the Claims Appendix in Applicants' Brief on Appeal.

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EVIDENCE APPENDIX

NONE

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RELATED PROCEEDINGS APPENDIX

NONE

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